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Directive 99-3: Sales and Use Tax Treatment of Protective Clothing

Introduction

This Directive announces a change in the application of the sales and use tax exemption for clothing contained in G.L. c. 64H, § 6(k), to items of protective clothing that are typically worn in a workplace.

Issue

Are shop aprons, chef coats, lab coats, office or counter coats, butcher gowns and similar items that protect the wearer's clothing from soil or stain in the workplace exempt from sales and use tax?

Directive

Sale, rental or use of shop aprons, chef coats, lab coats, office or counter coats, butcher gowns, and similar items is exempt from tax under G.L. c. 64H, § 6 (k).

Discussion of Law

Generally, clothing and footwear with a sales price of one hundred seventy-five dollars or less is exempt from sales and use tax. G.L. c. 64H, § 6(k) exempts:

Sales of articles of clothing, including footwear, intended to be worn or carried on or about the human body up to one hundred and seventy-five dollars of the sales price on any article of clothing. For the purposes of this section, clothing or footwear shall not include special clothing or footwear primarily designed for athletic activity or *protective use* and which is not normally worn except when so used. (Emphasis supplied.)

Historically, the Department has interpreted § 6(k) as exempting such items as household aprons from tax. For example, in LR 80-59, "cotton aprons and jumpers for children and adults" were ruled to be exempt. Also see the Guide to Sales and Use Tax, p. 15, which lists "Aprons: barbecue, household" under "Exempt." However, the Department treated items such as shop aprons worn in a workplace as taxable because they were intended for "protective use" and therefore not exempt under the statute, e.g., the Guide to Sales and Use Tax lists "Aprons: shop" as taxable.

The Department has subsequently determined, as a policy matter, that making a distinction between household and barbecue aprons, which protect the wearer's clothing from soil and stain at home, and shop aprons and similar garments which protect the wearer's clothing in the workplace is not required by the statute and that shop aprons and similar items are exempt.

Pursuant to this Directive, the term "protective use" in G.L. c. 64H, § 6(k) will be interpreted to refer only to special garments, headgear, footwear or gloves primarily designed to protect the wearer from physical injury, e.g., a bullet-proof vest worn by a law enforcement officer, insulated gloves worn by a worker in a frozen foods plant, protective clothing worn by beekeepers (LR 85-64), or items described in the federal Department of Labor, Occupation Safety and Health Administration (OSHA) regulations pertaining to Personal Protective Equipment, 29 CFR 1910.132 *et seq.* The term "protective use" does not refer to clothing designed primarily to protect the product being manufactured, e.g. "clean room" clothing or hats and gloves worn by workers in the food service industry, or clothing primarily designed to protect the wearer or the wearer's street clothes from soil and stain.

The Department will apply the policy announced in this Directive to all open tax periods, whether or not an assessment has previously been made. Vendors who have collected and remitted tax that is

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not due under the new policy may file for an abatement within the time periods set forth in 830 CMR 62C.37.1(2) by filing form CA-6.



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Acting Commissioner

BFC:DS:tl

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